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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1962

No. 134

DAVID NAMET, PETITIONER,

vs.

UNITED STATES.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR CERTIORARI FILED MAY 21, 1962
CERTIORARI GRANTED OCTOBER 15, 1962

SUPREME COURT OF THE UNITED STATES

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INDEX

	Original	Print
Record from the United States District Court for the District of Massachusetts		
Docket entries in U. S. v. Namet	1	1
Docket entries in U. S. v. Kahn	2	2
Excerpts from stenographic record of trial before Sweeney, C.J.	4	4
Opening statement by Mr. Redmond	4	4
Colloquy between Court and counsel	6	6
Testimony of Annette Kahn— direct	7	7
Colloquy between Court and counsel	7	7
Testimony of Annette Kahn— (resumed)— direct	13	12
Colloquy between Court and counsel	14	13

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	Original	Print
Record from the United States District Court for the District of Massachusetts—Continued		
Excerpts from stenographic record of trial before Sweeney, C.J.—Continued		
Testimony of Charles F. Burley—direct	17	15
Robert A. Sawtelle—direct	18	16
James E. Green—direct	21	19
George E. Moulaison—direct	22	20
Colloquy between Court and counsel	28	21
Testimony of Irving Kahn—direct	30	23
David Namet—direct	33	26
Charge to the Jury	36	29
Testimony of Robert A. Sawtelle—direct	44	33
Judgment and commitment	49A	38
Proceedings in the United States Court of Appeals for the First Circuit	50	40
Opinion, per curiam	51	41
Judgment	52	42
Clerk's certificate (omitted in printing)	53	42
Order allowing certiorari	54	42

[fol. 1]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

No. 60-303-S.

THE UNITED STATES

vs.

DAVID NAMET

DOCKET ENTRIES

1960		
Dec.	27	Information filed
1961		
Jan.	9	Sweeney, Ch. J. Deft. arraigned and pleaded not guilty; bail cont'd.
	9	Appearance of John H. FitzGerald for deft. filed
Feb.	27	Court reporter's transcript of proceedings on Jan. 9, 1961, filed
Sep.	26	Appearance of Paul J. Redmond, Asst. U S Atty.
Oct.	3	Sweeney, Ch. J. Deft. set to the bar to be tried; jury trial begins, jury sworn and empanelled; evidence; adjourned to Oct. 4.
	4	Sweeney, Ch. J. Jury trial continues; evidence; conclusion of Gov't evidence; conclusion of deft's evidence; deft's oral motion for judgment of acquittal, motion denied; Gov't Memo. filed; arguments; committed to jury; deliberation; verdict —guilty on both counts; disposition in two weeks.
Oct.	23	Sweeney, Ch. J. Deft. sentenced to be imprisoned for a period of four (4) months and to pay a fine of $1000.00; execution of sentence stayed for two (2) weeks for appeal.
	31	Judgment and commitment entered. Attested copy to Hon. W. Arthur Garrity, Jr., Paul J.

[fol. 2]

Redmond, Esq., Asst., to John H. Fitzgerald, Esq. One State St., Boston and to Daniel F. Griffin, Esq., Chief Probation Officer Oct. 31, 1961.

31 Notice of Appeal from jdgmt entered Oct 31, 1961 filed by deft.

Nov. 1 Stmt of docket entries w/cy N/A delivered to Court of Appeals. Cy N/A to Paul Redmond, Asst. U.S. Atty.

15 Original pleadings delivered to Court of Appeals.

15 Stenographic Record of trial Oct 3, 1961, filed.

22 Stenographic record filed Nov 15, 1961 delivered to Ct. of Appeals.

No. 60-304-S.

THE UNITED STATES

vs.

IRVING KAHN AND ANNETTE KAHN

DOCKET ENTRIES

1960

Dec. 27 Information filed

1961

Jan. 9 Sweeney, Ch. J. Deft. Irving Kahn arraigned and pleaded not guilty; Ordered to recognize in the sum of $1000. personal; forty eight hours for motions; Recog on file

9 Appearance of John H. FitzGerald for both defendants filed

9 Sweeney, Ch. J. Deft. Annette Kahn arraigned and pleaded not guilty; Ordered to recognize in the sum of $1000. personal; forty eight hours for motions; recog. on file.

[fol. 3]

Feb. 27 Court Reporter's transcript of proceedings on Jan. 9, 1961, filed

Sep. 26 Appearance of Paul J. Redmond, Asst. U.S. Atty.

Oct. 3 Sweeney, Ch. J. Deft. Irving Kahn retracted plea of not guilty and pleaded guilty; bail cont'd. Disposition in two weeks.

3 Sweeney, Ch. J. Deft. Annette Kahn retracted plea of not guilty and pleaded guilty; bail cont'd. Disposition in two weeks.

Oct. 5 Court Reporter's transcript of proceedings on Oct. 3, 1961, filed

23 Sweeney, Ch. J. Deft. Irving Kahn sentenced to be imprisoned for a period of one year, execution of sentence suspended and defendant placed on probation for a period of two (2) years, to pay a fine of $1500. by October 24, 1961 at 11 A.M. or stand committed.

23 Sweeney, Ch. J. Deft. Annette Kahn—imposition of sentence suspended and deft. placed on probation for a period of two years.

31 Judgment and order of probation Irving Kahn entered Copy to Hon. W. Arthur Garrity, Jr., U S Atty., Paul J. Redmond, Esq., Asst., John H. Fitzgerald, Esq., One State St., Boston, and to Daniel F. Griffin, Esq., Ch. Probation Officer, Federal Bldg., Boston, Oct. 31, 1961.

31 Judgment and order of probation Annette Kahn entered. Copy to Hon. W. Arthur Garrity, Jr., U S Atty., Paul J. Redmond, Esq., Asst., Federal Bldg., Boston, John H. Fitzgerald, Esq., One State St., Boston Oct. 31, 1961, and to Daniel F. Griffin, Esq., Chief Probation Officer, Federal Bldg., Boston.

[fol. 4]

IN THE UNITED STATES DISTRICT COURT

Excerpts from Stenographic Record of Trial before Sweeney, Ch. J.

OPENING STATEMENT BY MR. REDMOND

Good morning, ladies and gentlemen. My name is Paul Redmond. I am an assistant United States Attorney and I represent the Government here today. Mr. John Fitzgerald represents the defendant David Namet. And the Honorable Justice Sweeney will preside over the case.

I would like to read you the information in this case, the formal charge against David Namet (reading).

> "The United States Attorney charges David Namet —Count 1—of Chelsea in the District of Massachusetts, from on or about February 16, 1960 through on or about March 19, 1960 at Chelsea in said district did engage in the business of accepting wagers, as defined in 26 U.S.C. 4421 and did engage in receiving wagers for on behalf of a person liable for the tax on wagers imposed by 26 U.S.C. 4401, having willfully failed, prior to engaging in said business and receiving said wagers, to pay the special occupational tax as required by 26 U.S.C. 4411, due and owing to the United States for the year ending June 30, 1960, in violation of 26 U.S.C. 7203.
>
> "The United States Attorney further charges—Count 2—David Namet of Chelsea in the district of Massachusetts, from on or about February 16, 1960 through on or about March 19, 1960 at Chelsea, in said district, did engage in the business of accepting wagers as defined in 26 U. S. Code 4421, and did engage in receiving wagers for on behalf of a person liable for the tax on wagers imposed by 26 U.S. Code 4401, having willfully failed, prior to engaging in said business and receiving said wagers, to register as required by 26 U. S. Code [fol. 5] 4412, in violation of 26 U. S. Code 7203".

Ladies and gentlemen, his Honor will apprise you of the law, but I would like to say two or three things about it in my opening remarks to you.

There are two counts to the information I have just read to you. One is that the defendant willfully failed to pay an occupational tax. Now, this is the special occupational tax of $50.

The second count is that he willfully failed to register with the District Director of Internal Revenue.

Now, what happens here is that he must register with him if he is going to be in the business of accepting wagers, and he must pay a special occupational tax.

I just want you to keep those two things in mind, that there are two separate charges here. And at the end of the case his Honor will give you the law on it.

Now, as to the evidence the Government will produce, the Government will tend to show you, number one, that the defendant David Namet willfully failed to register, and that he willfully failed to pay the special occupational tax, full well knowing that he should have done both of these things.

You will hear testimony by a representative of the District Director's office of the Internal Revenue for this district, that the defendant David Namet did not register and did not pay a tax.

Also, I have reason to believe that there will be testimony by a husband and wife that they did accept wagers as agents for the defendant David Namet, that he was in fact their principal, and that he did not merely pick up slips from them on which they had accepted wagers, but I have reason to believe they will testify that he would settle with them each day on the accounts, on the bets, that they had taken the previous day.

[fol. 6] Further, there will be testimony by Special Agents of the Intelligence Division of the Internal Revenue system —these gentlemen are commonly known as the Racket Squad —that they kept the defendant David Namet under surveillance for a period of almost two months, and they will testify as to the defendant's regular movements in an area in Chelsea; they will testify they could almost set their watch by the defendant's movements from one store, to another store, to another store.

You will also hear testimony by some of these agents that these stores—that they observed in these stores wagers being placed, and that these stores were bookie parlors.

These agents will further testify that they accompanied James E. Mahoney, Deputy United States Marshal, to the defendant Namet's home on March 19, 1960, and there seized materials of wagering.

These materials will be presented to you through the Deputy Marshal, and a valuation of them will be made for you by one of the Intelligence Agents who will qualify as an expert in this field.

Thank you.

COLLOQUY BETWEEN COURT AND COUNSEL

(Conference at the bench as which the following was recorded:

Mr. Fitzgerald: Your Honor, it is my understanding that the United States Attorney is going to attempt to use the Kahns as witnesses.

Now, keeping in mind that they are defendants, that they are entitled not to testify in their own case—

The Court: They have pleaded guilty.

Mr. Fitzgerald: I know that, your Honor, but still I didn't waive any Constitutional privileges in their behalf.

The Court: I think the law is that they have no Constitutional privileges after they have pleaded.

[fol. 7] Mr. Fitzgerald: Your Honor, further that they are under investigation by the Internal Revenue Department as far as their income taxes are concerned, and everything else.

The Court: Well, I haven't seen them take the stand yet, and if they claim the Fifth, I will rule on it then.)

• • • • • • •

ANNETTE KAHN, Sworn

Direct examination.

By Mr. Redmond:

Q. Will you state your name, please?
A. Annette Kahn.
Q. Will you speak up just a little bit?
A. Annette Kahn.
Q. And would you give us your address, Mrs. Kahn?
A. 102 Essex Street—well, do you want the business address?
Q. No, your residential address.
A. 102 Essex Street, Chelsea, Mass.
Q. And are you and your husband proprietors of Harvey's Variety Store in Chelsea?
A. Yes, we are.
Q. Do you know the defendant David Namet, Sr.?
A. I have known him for about two years; we know him by sight.
Q. You do know him?
A. Yes, we know him by sight.
Q. During 1960, Mrs. Kahn, did you and your husband have some type of business relationship with the defendant David Namet?
A. Our attorney advised us not to answer on the plea of the Fifth Amendment.

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Fitzgerald: The defendant refuses to answer on my advice.
[fol. 8] The Court: Step up here, please.

(Conference at the bench at which the following was recorded:

The Court: So far as the Namet case is concerned, because of the plea of guilty she can be compelled to testify against him.

As to the commission of any other crimes no, she cannot be; she has a right to claim the Fifth. But you have got to proceed on it slowly because—

Mr. Fitzgerald: Your Honor, may I stand beside her while she testifies, being her counsel?

The Court: Well, I would rather have you not stand beside her, because that could impress the jury.

But ask the questions slowly, and you can take your objection each time.

Now, I want you to be very careful not to bring in the commission of any other crimes, or ask her any questions which would relate other than to her—.

Mr. Redmond: Or her husband as a co-defendant? I don't believe she can be compelled to testify—

The Court: Co-defendant?

Mr. Redmond: With her. It is a husband and wife situation, too.

The Court: She can't testify to conversations, of course, but she can testify as to what she did and what she saw with relation to Namet.

Mr. Fitzgerald: Your Honor, if I should rise in my chair, may that be taken that she pleads the Fifth Amendment?

The Court: Yes. Now, the question pending is what?

Mr. Redmond: Did she have business relationships.

The Court: That is a legal conclusion, a business relationship.

[fol. 9] She says she knew him, I think, and you can ask her what her relationship was, not business relationship. And anything he said or did, she can testify to.

Mr. Fitzgerald: Your Honor, may I speak to the witness?

The Court: Yes.

(Mr. Fitzgerald confers with the witness.)

(The conference at the bench continues:

The Court: I want you to consider another practical aspect of this. I know you are in a spot with separate defendants, but if she is going to claim the Fifth Amendment and the Court sustains her, when it comes to the disposition of her case she can't claim that she cooperated with the Government.

Mr. Fitzgerald: That is true, your Honor.

The Court: You may be heading into a bad spot.

Mr. Fitzgerald: I didn't have that in mind when I pleaded her, your Honor, that she would cooperate with the Government.

The Court: But when it comes to the disposition, many times defendants' counsel seek leniency on the ground that the defendant did cooperate.

Mr. Fitzgerald: I don't see how I can, your Honor; I don't see actually how I can make that claim. If I am wrong, it is me that is wrong, not her. They are listening to me only, and I am doing the best I know how.

The Court: I want you to do that. Has Nanet got a defense here?

Mr. Fitzgerald: He has, yes, sir. In other words, your Honor, I don't believe that they can show he received one wager, accepted one wager, within the interpretation by the Court of the statute.

The Court: Isn't one enough?

[fol. 10] Mr. Fitzgerald: One is not enough, no. They can't show one.

Mr. Redmond: Might I say this, your Honor? The problem I have here, your Honor, is that what Mr. Fitzgerald says is true, but with these two witnesses I can show that he was a principal. This is the reason they are essential to my case.

The Court: Well, you have got a question—I am going to be very careful that she doesn't lend herself to a charge of conspiracy.

Now, conspiracy is a separate crime. You haven't charged it against either one of them here, and I can't let her testify to anything that will convict her of conspiracy, or lay her open to it.

She has a right to claim the Fifth Amendment on that.

Mr. Fitzgerald: Well, your Honor, of course you won't sit in judgment on the facts, but may I say this, that I don't believe the Government can prove he is a principal. They have a lot of circumstantial evidence, but that circumstantial evidence can be interpreted two ways.

The Court: Well, circumstantial evidence is just as good as direct evidence.

Mr. Fitzgerald: I agree, your Honor.

The Court: Can't you arrange a disposition of this case?

Mr. Fitzgerald: Well, your Honor, the man's car has been taken on top of this. Actually, it is his son's car.

I am in this position. I am going to produce one witness, it is the man's son, a member of the bar, Boston College, and Boston College Law School graduate, and he is a practicing attorney, a young fellow.

His mother had just died, and he can tell you this, what [fol. 11] money they found was the proceeds of insurance policies.

The Court: What has that got to do with this case?

Mr. Fitzgerald: I am just saying, this boy lives in this house with his father. He knows what his father is, a retired man, he is the type of man, just to tell you, if I wanted a writ filed, or a paper in Boston—

The Court: I know, but—

Mr. Fitzgerald: I am just saying that this is the way of the case that I will present. I mean, you take a look at this man, and if you can conclude he is a principal—I am just saying, resting upon your Honor's own experience in the past with principals in these courts.

Mr. Redmond: This woman made admissions, too.)

The Court: I think I will let the jury have a recess now, while I discuss some points with counsel. You may retire. Have the witness leave the stand.

(The conference at the bench continues

Mr. Redmond: Here is what my problem is. This woman and her husband made statements to two Special Agents of the Intelligence Division, that they accepted wagers, and that when Namet came around he picked up the wagers, but that if the hits—and they would deduct 25 per cent off the top, that was their take, and we found slips in a raid on Harvey's Variety Store, with 25 taken off the gross amount.

They further told the agents that if the hits from the day before were more than the 75 per cent that was left, the gross that was left, that Namet would give them cash.

Now, your Honor, if that doesn't make him a principal, I don't know what does.

[fol. 12] Mr. Fitzgerald: That is consistent with the doings of a pickup man.

Mr. Redmond: It is not. The Calamaro case says merely he is picking up papers. I can bring experts in to testify

that a pickup man never handles cash and never pays off. All he does is pick up envelopes.

Mr. Fitzgerald: I dispute that myself. I am as familiar with what happens in those operations as I think anybody is, and every post office employee is that works on the street. It is consistent with the doings of a pickup man.

Mr. Redmond: To settle up with people?

Mr. Fitzgerald: He delivered whatever was settled.

The Court: But if he turns money over to pay short bets, he is not a pickup man.

Mr. Redmond: These statements were made not in the presence of the defendant, so that I have to convict Namet out of the Kahns' mouth.

Mr. Fitzgerald: But you can't make them say any statements against him that were not said in his presence.

Mr. Redmond: I am not going to go through the conversation.

The Court: I don't see how you can bring that evidence in without laying her open to a charge of conspiracy. She has a right to claim the Fifth against that.

Mr. Redmond: You mean conspiracy with Namet?

The Court: Any conspiracy, particularly a conspiracy with Namet. In other words, if they testified to these things, it would be perfectly easy for you to go to a grand jury and get an indictment on a charge of conspiracy and [fol. 13] they would have no—have you talked this over with Mr. Garrity?

Mr. Redmond: Well, I haven't talked it over with Mr. Garrity. I talked with Mr. Weyman Lundquist who was handling the case before I was.

The Court: I don't see how you can get that evidence in. If you had a charge of conspiracy against them and they pleaded guilty, that would be a different proposition. Have you got any chief of your criminal division down there now besid Mr. Garrity?

Mr. Redmon o, we haven't.

The Court: It would be impossible for you to go down and talk to him?

Mr. Redmond: With Mr. Garrity?

The Court: Yes.

Mr. Redmond: I don't know. I could see if I could.

The Court: Suppose the Kahns did not plead. What could you have done?

Mr. Redmond: I can then show that they—the places he regularly visited were bookie operations.

The Court: Why don't you take the Kahns off the stand and use your other testimony? Well, consider that for a few minutes, while we take a short recess.)

(Short recess.)

Mr. Redmond: May I proceed, your Honor?

The Court: Yes.

Mr. Redmond: Mrs. Kahn, please.

ANNETTE KAHN, Resumed

Direct examination.

By Mr. Redmond:

Q. Mrs. Kahn, I just want to ask you a few questions. You and your husband ran Harvey's Variety Store, did you?

A. Yes.

[fol. 14] Q. You were proprietors there?

A. Yes.

Q. Do you own the property?

A. We own it, yes.

Q. How long have you owned the property?

A. Well, we bought the property 13 years ago when we went—when we got this place, see, we have another place and cleared out, and we have been at this place about 13 years in August.

Q. Do you, Mrs. Kahn, know what a wagering tax stamp is?

A. I do know now, yes.

Q. When did you find out what it was?

Mr. Fitzgerald: I pray your Honor's judgment.

The Court: I will allow that.

Mr. Fitzgerald: I can't see what materiality it has.

The Court: Well, I can't pass on that at this moment, but I see no objection to it at the moment.

Q. You said "I do now"; is that the answer to the last question?

A. Yes.

Q. When did you find out what it was?

A. Well, when all this confusion came about.

Q. After March 19, 1960. You didn't know prior to that what it was, and you didn't know that a person who was engaged in accepting wagers had to register, and you didn't know that a person—

Mr. Fitzgerald: I pray your Honor's judgment. I can't see the materiality.

The Court: Step up here, please, and make an offer of proof.

COLLOQUY BETWEEN COURT AND COUNSEL

(Conference at the bench at which the following was recorded:

The Court: What is it?

Mr. Redmond: These are the questions I wanted to ask her.

The Court: But they have got to be material.

Mr. Redmond: Because it will show that she cannot then be tried for conspiracy.

[fol. 15] Mr. Fitzgerald: I pray your Honor's judgment.

The Court: No, she is open to a charge of conspiracy.

Mr. Fitzgerald: I shall object to any further questions along this line, your Honor.

Mr Redmond: In the Ingram case, it says the person must have knowledge of this.

Mr. Fitzgerald: She is not on trial here.

The Court: That is right. I will sustain the objection to that. You had better proceed with your other witnesses.

Mr. Redmond: Well, can I have a 15-minute recess? I talked to some of the agents, and I would like to talk to Mr. Garrity.

Mr. Fitzgerald: Well, your Honor—(a pause).

Mr. Redmond: It is obvious I am not going to be able to proceed with these two witnesses.

The Court: That is the way you came in to court, until they decided to plead, so why don't you try the case that you had without them.

Mr. Redmond: There is some question as to how strong our case is without them.

The Court: Well, if you haven't got a case, drop it.

Mr. Redmond: That is why I would like to talk to Mr. Garrity.

The Court: All right.)

The Court: The Government would like another 15-minute recess. I was going to recess about 20 minutes past 12.00, anyway, so I think I will let you go to lunch now, and come back at 2.00 o'clock.

(Jury excused.)

Mr. Fitzgerald: Could the Kahns be allowed to go? They run a little store, and it is their living now.

[fol. 16] The Court: If they are under summons, they can't.

Mr. Fitzgerald: Mr. Redmond, can I allow the Kahns to go?

Mr. Redmond: I think I am through with them, your Honor, yes.

Mr. Fitzgerald: All right.

The Court: We have a case here that sustains your position, except that this fellow who was a witness had pleaded guilty to both conspiracy and the substantive offense, then he took the stand and the lower court sustained him in his right not to testify. But the Circuit Court, the Second Circuit, Judge Hand, they reversed it.

Mr. Redmond: Well, your Honor, my position was this, that I only wanted to confine my questioning to the thing —No. 1, to the point that she had already pleaded guilty; she pleaded guilty and she no longer was in jeopardy.

And these preliminary questions I asked her show that, No. 2, she cannot be convicted of a conspiracy charge.

The Court: No, it doesn't say she can't be convicted. She might be put in jeopardy of it.

For instance, although she said she didn't know it until March 19th, you might dig up evidence to show that she did know it before March 19th. She would be open to a charge of conspiracy.

You talk it over with whoever you want to talk it over with, and if you have a case let's proceed with it.

I think you may have made a mistake letting the Kahns go. I think you had better keep them until 2.00 o'clock. They are still here?

Mr. Redmond: Yes, sir.

The Court: Or can you let one of them go home?

Mr. Fitzgerald: One of them I would like to have go home, preferably the husband; he has a bad heart, I know that, and he is under the doctor's care. Could you let one of them go?

[fol. 17] Mr. Redmond: I don't like to be harsh. I would just as soon proceed with both of them, and see what I could do.

Mr. Fitzgerald: Well, I would object.

The Court: You may be criticized downstairs if you let them go.

Mr. Redmond: This is the thought that occurred to me after I said "Yes, I can"; I want to talk to them first—

Mr. Fitzgerald: Talk to whom?

Mr. Redmond: Mr. Garrity.

Mr. Fitzgerald: Oh, I thought you meant the Kahns.

Mr. Redmond: Oh, no.

The Court: Why don't you do this? Keep the Kahns here, but go right down and talk to him now, so you can tell Fitzgerald whether you want them or not. And I will be back here at quarter of 2.00, and meet you gentlemen in chambers at quarter of 2.00, and start the trial at 2.00 o'clock.

Mr. Fitzgerald: Thank you.

Mr. Redmond: Thank you, your Honor.

* * * * * * *

CHARLES F. BURLEY, Sworn

Direct examination.

By Mr. Redmond:

* * * * * * *

Q. Would you tell us what you were doing there that day, when you observed—

A. I went to observe the Hawthorne Variety Store at 104 Hawthorne Street.

Mr. Fitzgerald: I pray your Honor's judgment. Does this have a bearing on the defendant?

The Court: How can I tell until I hear what he says?

Q. What time did you enter the premises?

A. I entered the premises at approximately 8.30 a.m.

[fol. 18] Q. Would you tell us what you observed?

A. Well, I observed in a period of an hour and 40 minutes the clerk, John, inside the store, accept number pools from six patrons of the store, that he wrote slips and accepted the money.

The Court: Now, was the defendant there?

Mr. Redmond: The defendant was not there, your Honor.

The Court: Then I cannot receive this testimony. The jury will disregard that testimony.

Mr. Redmond: Then could I withdraw this witness and put on another one, your Honor, and have the right to recall him?

The Court: I want this case speeded up. We started several hours ago and we have gotten nowhere yet. Yes, go ahead and call someone.

Mr. Redmond: All right, fine. You may step down. Special Agent Robert Sawtelle.

ROBERT A. SAWTELLE, Sworn

Direct examination.

By Mr. Redmond:

* * * * * * *

There were instances when I followed him on foot. He wore the same attire each day, he had a gray over-jacket, almost knee-length, he had patch pockets on either side of that over-jacket that fitted smoothly to his person.

As he made his afternoon visits, those pockets were more obviously filled with a material; as he made visit after visit, the pockets progressively filled with whatever he had taken from those premises.

The fact that after circulating in the afternoon the route and returning directly to his home carrying this material in these pockets, and once reaching his home didn't [fol. 19] leave the premises, nor did anybody else come to the premises and collect from him, indicated to me that—

Mr. Fitzgerald: I pray your Honor's judgment again, the use of the words of the witness.

The Court: Well, the words "and collected from him" may be stricken. The fact that no one appeared may stand.

The Witness: Well, the fact that nobody appeared at the premises indicated to me that that which he had brought on to the premises remained there with him.

The Court: Now, in your official capacity, were any of these places that he visited—did they have a reputation, a general reputation of any type?

The Witness: Yes, your Honor. Each of the places named by me had a general reputation as a bookmaking operation.

The proprietors of these locations and the persons on the premises being one and the same in many instances, had reputations—

Mr. Fitzgerald: Your Honor, I don't want to keep objecting, but I find that I must. These places have a reputation—they are all variety stores, and I believe he testified other people were going in and out of these stores.

The Court: Well, that is more or less a question of argument. Here is a man you admit is an expert who says they did have a reputation. Go ahead.

The Witness: And furthermore, the persons operating these stores for the most part had previous records of convictions for bookmaking violations.

Mr. Fitzgerald: I pray your Honor's judgment.

The Court: I will allow it.

The Witness: The observations I made of the respective locations I have named during the time when I did not have Mr. Namet under surveillance showed a consistent stream of pedestrians and vehicular traffic to the door, and in and out of the door of these respective places, that was [fol. 20] not conducive of the ordinary variety store or smoke shop customer trade.

Nor did the majority of these people come from those premises with any noticeable purchases in their hands.

And the morning visits made by Mr. Namet to these respective places differed from the afternoon visits in that the morning visits were of a duration of three to five minutes inside of each place, and the afternoon visits were of a duration, as I say, of 15 seconds, 30 seconds, 45 seconds, in and out, indicating to me a lengthier conversation between him and the persons in these premises in the morning, which was conducive in an operation of the type I have described with settling up in the morning, and merely collecting the material in the afternoon.

Mr. Fitzgerald: I pray your Honor's judgment. There is no evidence of what Mr. Namet did in these places. I think it is an unfair statement on the part of the witness.

The Court: What was the statement?

(The answer was read.)

The Court: Well, change the term "conducive" to "might be", and I will let it stand.

Q. Were you ever on any of these premises when David Namet, the defendant, entered them?

A. Yes, I was.

Q. What did you observe at that time?

A. On one morning I preceded Mr. Namet when he left the Hawthorne Variety and went down Third Street to the Third Street Smoke Shop.

I cut across directly at Chelsea Square, in order to be inside the Chelsea Square Smoke Shop at the time he would come in after finishing with the Third Street Smoke Shop.

So I went in and bought some cigarettes and a newspaper, and I was standing there having a conversation with the counterman when Namet did come in.

[fol. 21] Namet came in and stood inside the door and spoke to the counterman. I was standing between the two of them. And he asked the counterman who I was, and the counterman shook his head, he didn't know.

And Namet said, "I will wait until he leaves".

So I walked out, and Namet came out a few minutes later and continued on up the street to Dalis and Sullivan

Brothers and a couple of other stops he had in the Chelsea Square area.

But what he was doing there, he would not do in front of me.

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JAMES E. GREEN, Sworn

Direct examination.

By Mr. Redmond:

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Q. I would like to turn your attention now to March 8, 1960. Were you in the Old Timers Cafe in Chelsea on that day?

A. Yes.

[fol. 22] Q. Was the Old Timers Cafe in Chelsea one of the stops the defendant Namet used to make in his daily route?

A. It was.

Q. Would you tell us as to your observations in the Old Timers Cafe that day?

Mr. Fitzgerald: I pray your Honor's judgment.

The Court: Was the defendant Namet there?

Mr. Redmond: The defendant was not there, your Honor. Could we approach the bench?

The Court: Yes.

(Conference at the bench at which the following was recorded:

Mr. Redmond: Aren't we entitled to show that at these places he was visiting there was wagering going on?

The Court: No, not unless he saw the defendant there while the wagering was going on.

Mr. Redmond: Well, could I have a five minute recess?

The Court: What for?

Mr. Redmond: Because a lot of the witnesses I was going to put on, your Honor, I am not going to put on now. It will be much shorter this way, actually.

The Court: All right, the Court will recess.)

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Mr. Redmond: Mr. Fitzgerald says we can agree that this witness would qualify as an expert, in order to expedite matters. May the record show that?

The Court: All right, it is agreed.

Q. I show you now these two slips, Mr. Moulaison. Could you tell us what they are?

A. These are half price number slips which Agent Sawtelle described in his testimony.

[fol. 23] Basically, if the number is played too heavily, they periodically, or every six months, they will take these particular numbers and make them half price numbers, which in effect means that if they hit, that the return is cut in half.

Q. Would a bookie ordinarily have these in his possession?

A. Normally he would have, for the benefit of his customers.

Q. I show you now these various slips. Do you recognize these as part of the evidence taken at 110 Bloomingdale Street?

A. I do.

Q. Could you tell us what these are, Mr. Moulaison?

A. These are three by five pads or bookie slips, and reflect daily double bets almost exclusively.

The Court: Those slips, as written now, were found in the defendant's own home?

The Witness: That is my understanding, yes.

The Court: You didn't write these?

The Witness: No, sir.

Q. These are daily double. Are there any number plays in any of the envelopes, or cards, or on any of the other slips?

(A pause.)

Q. Let me ask you this. I now show you this card, Mr. Moulaison. Are there numbers upon that card?

A. There are.

Q. What do they reflect, in your opinion?

A. These are number plays, 4-number and 3-number plays.

Q. If a man played numbers with a bookie, is this the type of receipt he would get for it, any of these slips before you?

A. If a man played—?

Q. Played with numbers or horse bets.

A. None of these slips would be normally in the possession of a player. The player would end up with a carbon copy.

[fol. 24] Q. Would these be in the possession of the bookie normally?

A. Under normal circumstances the original slip would end up in the bookie's possession, yes.

Mr. Redmon: I have no further questions.

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[fol. 28]

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: All right, step down. Next witness.

Mr. Redmond: We have no further witnesses, your Honor.

The Court: All right, I will hear the defense.

Mr. Fitzgerald: Your Honor, does the Government rest?

Mr. Redmond: No, I presume we are going—that the memorandum can still be filed and we may still call—

The Court: Not if you are resting. I can't allow this court to be interrupted for another hour just to take on a memorandum. You are supposed to be prepared to try the case when you come in here. Is the defense ready to go ahead?

Mr. Fitzgerald: Yes, your Honor.

The Court: I will have to hear from the defense. I had assumed that when I said I would receive the memorandum in the morning, I had assumed that you would be going all afternoon.

Mr. Redmond: I had assumed we would, too, but four of our witnesses were not put on.

The Court: Let me see counsel up here.

(Conference at the bench at which the following was recorded:

The Court: I don't think you are going to be able to convince me about the Kahns, but I don't want to shut you off. But hereafter I want you to be ready on these things. Don't calculate too much on what is going to happen. How long will the defense take?

Mr. Fitzgerald: I have one witness, your Honor.

The Court: I think I can safely adjourn until 10:00 o'clock tomorrow. And I have got to have this case ended before 3:00 o'clock.

Mr. Fitzgerald: I might say that my witness—I will tell you who he is—he shouldn't take more than 20 minutes. [fol. 29] The Court: The defendant?

Mr. Fitzgerald: The defendant will not take the stand. His son will. I was also prepared, if the Government rested, to offer a motion for judgment of acquittal.

The Court: They do that in every case. I always expect that.

Mr. Fitzgerald: Sometimes they are allowed, too.

The Court: Sometimes.

Mr. Fitzgerald: I know I had a similar case with Judge Ford in United States vs. Amoroso, and we got that.

The Court: Well, I will hear you at 10:00 o'clock tomorrow morning. You give my secretary all the authorities you have tonight, right now, and give us anything in addition in the morning by 9:30. And I will meet you at quarter of 10:00 in the morning, and we will start the trial at 10:00 o'clock.

Mr. Redmond: Do I understand that on my memorandum, that this evidence will be excluded on the grounds that it would put her in jeopardy of having another charge against her?

The Court: No, I assume what she means to say is she doesn't want to testify because that may incriminate her.

Mr. Redmond: All right, fine.

The Court: She doesn't have to specify why. All she has to say is that. At this moment I don't see how you can avoid a charge that anything she says might incriminate her if a charge of conspiracy was brought against her. Amongst other things; I just mentioned conspiracy.

She may refuse to testify on the ground that it might show there was some bribery present, that she was oper-

ating a mission for some people. I don't know what the [fol. 30] crime might be. If she says the evidence might incriminate her, I have got to go along with her.

Probably, if I doubted her, I could examine her in private.

Well, that is about it.

Mr. Redmond: I talked to Mr. Garrity, and he was—well, this is something I will mention in my memorandum.)

* * * * * * *

IRVING KAHN, Sworn

Direct examination.

By Mr. Redmond:

Q. Will you state your name, please, sir?
A. Irving Kahn.
Q. And your address, Mr. Kahn?
A. 102 Essex Street, Chelsea.
Q. You run a variety store in Chelsea, Mr. Kahn?
A. Yes.
Q. Do you know the defendant David Namet?
A. Yes, sir.
Q. Did you have some dealings with the defendant David Namet in February and March of 1960?
A. I refuse to answer by advice of counsel.

The Court: All right, I will order you to answer that question. The question is yes or no, did you have some dealings with him?

The Witness: Yes.

Q. Can you tell us what those dealings were?
A. I refuse to answer on advice of counsel.

The Court: Go ahead. Next question.

Q. Did you accept wagers at your variety store in Chelsea in February and March of 1960?
A. I refuse to answer on the advice of counsel.

[fol. 31] The Court: I will allow that question.

The Witness: Did I accept wagers?

Q. Yes.
A. No.
Q. You did not accept wagers?
A. No, sir.
Q. You never took a bet in your variety store?
A. I refuse to answer that question.

The Court: I will allow that question.
Mr. Fitzgerald: I believe, your Honor, he has already pleaded guilty to that.
The Court: That is all right, let's see how consistent he is going to be.
Mr. Fitzgerald: I guess he is misinterpreting my standing up, your Honor.
The Court: What is that?

(Conference at the bench at which the following was recorded:

Mr. Fitzgerald: Yesterday when I was up here, I explained to the Court that rather than my objecting all the time, if I stood up it would be a signal for the witness to say that, and we agreed. I think when I am standing up now he is confused.
The Court: Then sit down.
Mr. Fitzgerald: Could I just speak to him for a minute?
The Court: No, I have spoken to him.
Mr. Redmond: Can I proceed, your Honor?
The Court: Yes.
Mr. Fitzgerald: Now I won't know whether to stand up or not.
The Court: Well, don't give him any signals. I will take care of it.)

The Court: Now, Mr. Witness, you look at me each time a question is put to you, and I will tell you whether to answer it or not. What is the previous question?

[fol. 32] (The question was read.)

The Court: Answer the last question.
The Witness: Yes, sir.

Q. You did take bets?
A. Yes.

Q. And were you paid a commission on all the bets you took in your variety store?

A. I refuse to answer.

The Court: I will sustain that objection. Next question.

Q. How often did the defendant David Namet come to your store, Mr. Kahn?

A. I refuse to answer.

The Court: No, you may answer that.

The Witness: How often did he come to my store?

Q. How often did he come to your store?

A. A couple of times a week.

Q. No more than that?

A. No.

Q. Isn't it a fact that he came once in the morning and once in the afternoon?

A. No, sir.

Q. Every day of the week?

A. No, sir.

Q. Well, let's exclude Sundays. Monday through Saturday didn't he come to your store twice every day, once in the morning and once in the afternoon?

A. No, sir.

Q. Who did you accept the bets for that you took in your variety store?

A. I refuse to answer.

The Court: I will sustain that. Next question.

Q. Did you ever take bets for the defendant David Namet?

The Court: I will sustain an objection to that.

Mr. Redmond: I have no further questions, your Honor.

Mr. Fitzgerald: I have nothing.

The Court: Step down.

Mr. Redmond: The Government rests, your Honor.

The Court: All right, I will hear the defense.

Mr. Fitzgerald: Your Honor, I have a motion.

[fol. 33] The Court: Unless you are resting, I won't pass on it.

Mr. Fitzgerald: May this witness be sworn, please.

DAVID NAMET, Sworn

Direct examination.

By Mr. Fitzgerald:

Q. Will you please state your name?
A. David Namet.
Q. And you are the son of the defendant?
A. Yes.
Q. Where do you live, Mr. Namet?
A. 110 Bloomingdale Street, Chelsea.
Q. That is the same house in which your father resides?
A. Yes.
Q. The same building, the same flat where the Treasury Agents entered?
A. Yes.
Q. In March of 1960?
A. Yes.
Q. And you are a professional man, Mr. Namet?
A. Yes.
Q. What profession?
A. I am a lawyer.
Q. You are a member of the Massachusetts Bar?
A. Yes.
Q. And you hold a college degree, do you not?
A. Yes.
Q. From which college?
A. Boston College.
Q. And Mr. Namet—

Mr. Redmond: I will object to this, your Honor. I don't see what this has to do with it.

The Court: I will take care of it.

Q. Now, Mr. Namet, do you live with your father all the time?
A. Yes.
Q. And what is your father's means of support?
A. He is retired from the Massachusetts Department of Public Works and receives a pension from the Department of Public Works, and also a pension from the United States Government.

Q. And how old is your father?

A. 66.

[fol. 34] Q. Does your father have any other means of support?

A. He—

Mr. Redmond: My objection to this.

The Court: No, I will allow it.

The Witness: Sir, he runs errands around town, and also around election time he does some printing work for a—commission printing for a printer in Revere.

Q. Now, Mr. Namet, since these are in evidence I will produce them for you; these are cards of candidates for office, are they not?

A. Yes.

Q. Is that the kind of printing your father did?

A. Yes.

Q. Similar to this?

A. Yes, sir.

Q. And he goes between a—he takes his printing around for a local printer, does he?

A. Quality Press of Revere.

Q. Now, Mr. Namet, you have seen much of these envelopes and things put into evidence, without taking them all apart, containing old slips, and so forth. Have you ever seen those around your house?

A. Yes, they have been around there for a number of years, the cigar box.

Q. How long has that cigar box been around your house?

A. Quite a long time.

Q. And these pins, and so forth, are these all your father's?

A. Yes.

Q. And these pencils here?

A. Yes.

Q. Now, Mr. Namet, there was a sum of money found in your house. Could you explain the source of that money? Do you know the source of that money?

A. Yes.

Q. What is the source of that money?

Mr. Redmond: Could we specify what money we are talking about?

The Court: That is what I was going to ask.

Q. The money in the envelopes. There were three envelopes produced here. Where was that money kept in [fol. 35] your house?

A. It was kept in a cedar chest in my father's bedroom.

Q. And how long had that money been in the cedar chest?

A. About a year.

Q. And what was the origin of that money?

A. The proceeds of an insurance policy, my mother's insurance policy.

Q. Your mother had died previously?

A. About a year, yes, September of 1958.

Q. And this is the proceeds, the difference between what her burial cost and the money?

A. Yes, sir.

Q. Now, Mr. Namet, just putting the question to you very bluntly, is your father a bookie?

A. No, sir.

Q. Is he in the bookmaking business?

A. No.

Q. Does your father accept wagers of any kind?

A. No.

Mr. Fitzgerald: I have no further questions.

* * * * * * *

Mr. Fitzgerald: That is the defendant's case.

The Court: No rebuttal?

Mr. Redmond: No, sir.

The Court: How much time do you want to argue? About 15 minutes apiece?

Mr. Fitzgerald: Will your Honor entertain the motion at this point?

The Court: Yes. I am going to deny it. 15 minutes apiece for argument?

Mr. Redmond: I don't believe mine will be that long.

The Court: All right, I will hear arguments now.

I might say to the jury now that all of the evidence has been presented. What you have heard on the stand is the

evidence. Nothing that I say or the attorneys say is the evidence in this case, but what you have heard here is the evidence.

[fol. 36]

IN THE UNITED STATES DISTRICT COURT

CHARGE TO THE JURY

The Court: Now, Madam Foreman and ladies and gentlemen, it is my duty to charge you on the law of this case. And while I have the right to comment on the facts as I view them, I am not going to do that. I am going to leave the facts entirely to you to find.

And with that in mind, I want you to follow the law as I give it to you, regardless of how unfair you think the law is, or how improperly I interpret it. If I make an error, that can be corrected. If you make an error, that can't be.

Now, you have got a cold-blooded job here, which you [fol. 37] ought to approach without any prejudice or without any sympathy, and without any preconceived ideas of whether gambling is a good thing or not.

The Government, and the United States which brings this case, is not interested in bookmaking, except in so far as it produces tax revenue. Bookmaking is not a Federal crime, and never has been.

But the Government, to support itself, can levy taxes, and it has said that every man who is a bookmaker must pay an occupational tax of $50. And to make sure who owes that money, they have said also that everyone who is a bookmaker must register. Those are what the two counts say.

And there is no question that he did not pay the occupational tax, and there is no question that he did not register. That is admitted.

So that while we are not concerned with the crime of bookmaking as it exists in Massachusetts, we are concerned with the question of whether or not this man was a bookmaker for the purpose of determining whether he is liable for this tax and liable to register.

Now, the best thing that you can use in deciding this case is your own good common sense. I am going to tell you what the law is as you approach the exercise of your com-

mon sense, but that is probably your greatest asset in [fol. 38] deciding this case.

Now, the Government brings this case after this surveillance that you have heard about. After having gathered the evidence, they have brought this case before you charging that this defendant did not register and did not pay an occupational tax, he being liable for both. And there is no question, as I have said of whether or not he paid or registered; he didn't. The question is was he a bookie and liable.

Now, since that is the gravamen of the case, the burden is on the Government to prove that this man was a bookie under the law as I will shortly give it to you, and their burden is to prove it to you beyond a reasonable doubt. I am going to read something now to you that an upper court has said was good law and good instructions (reading):

> "In criminal cases the law presumes that persons charged with crime are innocent until they are proven by competent evidence to be guilty. To the benefit of this presumption of innocence the defendant is entitled, and this presumption stands as his sufficient protection unless it has been removed by evidence proving his guilt beyond a reasonable doubt. The burden is on the Government before the defendant can be convicted, of [fol. 39] establishing every essential element of the crime charged beyond a reasonable doubt.
>
> "A reasonable doubt of guilt is a doubt growing reasonably out of the evidence or the lack of it. It is not a captious doubt, not a doubt engendered merely by sympathy for the unfortunate position of the defendant or by a dislike to accept the responsibility of convicting a fellow man.
>
> "If having weighed the evidence on both sides you reach the conclusion that the defendant is guilty to that degree of certainty that would lead you to act on the faith of it, you may properly convict him.
>
> "Proof beyond a reasonable doubt is not proof to a mathematical demonstration. It is not proof beyond the possibility of a mistake. If such were the standard of evidence required, most criminals would go unwhipped of justice".

Now in the first place, you must not draw any inference from the fact that the defendant himself did not take the stand. He doesn't have to. He can sit mute and stand or fall upon the Government's case. Or he may take the stand [fol. 40] as he wishes. But from the fact that he didn't take it, you should not draw any inference against him.

Nor should any inference be drawn against him because the Kahns refused to testify, unless it would be a logical inference that would appeal to you as having a direct bearing upon the defendant's guilt.

Now, the layman seems to think that circumstantial evidence is a second-class kind of evidence. It is not. Circumstantial evidence is just as good as direct evidence if it has that impact upon your mind that would exclude every other reasonable hypothesis except the one of guilt.

Many crimes are committed in secret, and it isn't always possible to have a witness who sees a crime committed, particularly a crime that has a chain of events in its natural execution. So that when I say to you that circumstantial evidence is just as good as direct evidence, I say that to you in full sincerity, and it is the law.

Now, to start off with, you have heard the story of the expert, and counsel for the defense agreed he was an expert on how bookies operate. Even I learned something from him. He told you how they have pickup men who are salaried employees, really messengers who are no part of the betting transaction; they are merely messengers who pick up slips and money and transport it to the man who is really taking the bets.

[fol. 41] And he emphasized how they do business, what times the monies are collected and what times the payoffs occur. You have heard how he described the whole operation, and I should think the question that you have got to ultimately decide is how well the activities of this defendant fitted into that program defined and outlined by the agent.

You have a lot of other evidence that you want to fit into that picture. You have the evidence of the slips that were found in Namet's home. Were they bets, or were they just notations of one kind of another that had accumulated?

You have the money, which is explained as being the proceeds of an insurance policy, I think the young man said about a year ago.

And how does that fit into your conception of what a normal person does when they receive insurance money. Do they keep it in the house for a year? Do they bank it? Do they distrust banks and keep it there?

You have the types of money. You will see it. You will have it with you if you want it. You will see the species and the denominations. How well does that fit in with the story of insurance?

You have the reputations of the stores that this defendant visited. You have the story of the regularity. You have the story that has been argued to you of Namet in the [fol. 42] smoke shop and he wouldn't do business until the agent had left there. You have all of these things. And on those things the Government asks you to find this defendant guilty.

Now, if you are satisfied from all of the evidence that you have heard that Namet was really a bookmaker, then your answer to both of these counts in the indictment must be guilty.

On the other hand, if you find that he was not a bookie, that all of this evidence that has been presented to you does not drive you to a conclusion that he was, then you would find him not guilty.

You will have the evidence, and I am going to have the money sent to you, also, all of the evidence. I suggest that the Foreman take charge of the money, not that anyone would steal it, but for fear that if anyone did you would all be accused. And you go out and decide whether this man is guilty.

There are two counts. I don't see how you could find him guilty on one and not guilty on the other, or not guilty on one without finding him not guilty on the other. It will stand or fall pretty much on the question of was this man a bookie. If he was, he is guilty. And if he wasn't, he is not. [fol. 43] If there are any requests for further instructions, or I will now see counsel for any suggestions of errors or omissions.

(Conference at the bench at which the following was recorded:

Mr. Fitzgerald: I wonder if you would end on the note that you did; you said if they found he was a bookie he was guilty, but also, and our Supreme Court has so stated, that if he was merely a pickup man he must be found not guilty.

The Court: I have passed on that. I have said that. I have told them about the pickup man. I covered that in my charge.

Mr. Fitzgerald: I know you just referred to it once, but I thought on ending it up.

The Court: I can't end up more favorable to you.)

The Court: Now I will ask the jury to retire, and you can send for the exhibits if you want them.

(The jury retired to deliberate, and later returned with a verdict of guilty on both counts.)

The Court: Thank you very much. I think that was a just verdict. You are now excused until next Tuesday at 10:00 o'clock.

* * * * * * *

[fol. 44] ROBERT A. SAWTELLE, Sworn

Direct examination.

By Mr. Redmond:

* * * * * * *

Q. Will you describe a bookie operation to the jury?

A. Well, a bookmaking operation generally is conducted through retail outlets, so to speak, and these retail outlets are operated by persons, or those operators allow other persons to come on the premises for the purpose of accepting number pool or horse bet wagers from patrons coming into the premises.

On other occasions they may sell Treasury balance lottery tickets, but a wager regardless.

They accept the bet from the retail customer and take the money, give the customer a copy of the bet slip, they keep a copy of the bet slip, they hold those betting slips

and the money until a person contacts them to collect the bet slips from them.

And those bet slips are held by the principal in this operation, one who may have any number of retail outlets, until the outcome of those bets are determined, either the horse runs and wins, or it loses, or the number wins or loses, whatever it may be.

He takes this material generally to a location where he examines it for duplication of bets, and that would be where more than one person places a bet on the same horse, or more than one person places a bet on the same number.

The heavier the bets concentrated on a single race may be, the more risk to him of going broke if it hits. So when he realizes through tallying his play that he is overloaded on bets for a certain number or bets for a certain horse, [fol. 45] he will telephone to a layoff man. That is what he calls insuring his play.

So if he has a total of $50 on a certain horse, and he can't afford to pay off if the $50 is hit, he will bet himself to a layoff man, probably $10, $20, $30 of that money, and then if that horse or number does come in, he not only has won the money from the layoff man to cover his bets or loss, but he may have realized a profit for himself, too.

So when the outcome of the event, of the number or whatever the bet may be, has been determined, which is generally in the late afternoon or evening of the day the bets are made, he then has to reckon up with an examination of the bets that his agents have collected for him, to determine how many hits he has had, what the locations are that these hits came out of.

He has to set up his payoff envelopes, designating the initials of the hitter, the store, or whoever he took the bet from. He sets up these payoff envelopes and does the accounting at night.

The next morning there is a distribution of these hit monies made to the retail outlet, so when the customer comes in the next day and claims his payoff from the win of the day before, they have the money to pay him off.

In the nutshell, that is the way this type of operation, or how the number pool operation, or a horse bet operation, would function.

Q. Where would the pickup man come in?

A. The only place you have a pickup man in these organizations is where you have generally a large number of retail outlets where the bets are taken, and the principal cannot service all of these places himself, and still protect himself through analyzing the stuff and making his layoff insurance bets, and so forth.

In a case like that, they hire a pickup man or a runner. A pickup man or a runner is strictly a salaried messenger. [fol. 46] He gets no commission. Win, lose or draw in the operation, he still gets his week's pay. He has no concern and no proprietary interest in the way the thing operates.

So the pickup man merely goes out and collects this material, he does not collect the money, and brings the material to his principal, or to a place designated by his principal, and drops it.

He doesn't stay with it, he has no interest in it other than picking it up and delivering it where he is told to deliver it.

And on a given period, week or month, he gets settled up on a salary basis. Pickup man and runner are synonymous.

Q. Does he handle money between the principal and agent?

A. No, nor does he handle any settlements on the payoffs, merely picking up.

Mr. Redmond: I have no further questions at this time. I would like to be able to recall this witness as to the day of the actual raid.

The Court: Do it right now. I am not going to have this recalling.

Mr. Redmond: All right.

Q. I direct your attention, Mr. Sawtelle, to March 19, 1960. Were you in Chelsea on that day?

A. I was, yes, sir.

Q. Tell us what you did in Chelsea that day, Mr. Sawtelle?

The Court: Now, this is with regard to this defendant?

Mr. Redmond: That is right, your Honor.

The Witness: The first thing I did in Chelsea was to move into the area at a given time, in order to pick up the trail of Mr. Namet where he should be at that hour.

However, on this day when I moved into the area where he had been at that time on every other day I had been there, he wasn't there.

But the automobile he drove every day was parked un- [fol. 47] occupied on Amory Street off Bellingham Square, behind the City Hall.

So I saw the vehicle parked there, and the synchronized raids were for 1:00 o'clock, and my orders were to have followed Mr. Namet and at 1:00 o'clock apprehend him, and seize the automobile, an administrative seizure of the car he was driving.

So I took up a position near the car and stayed there until 1:00 o'clock, and nobody came to the vehicle in a period of a half to three-quarters of an hour.

I went over to the vehicle, the door was open, and I tied a prepared seizure tag on the steering wheel of the car.

And there were no keys in the vehicle, so I had to leave it there.

I then drove up to Namet's house at 110 Bloomingdale Street, or Avenue, and the Deputy Marshal and a group of special agents had already entered the premises with a search and arrest warrant, and both warrants had at that time been executed.

When I walked into the kitchen, David Namet was seated at a table, and he was being interviewed by Special Agent Edgerley of my group, and other agents were assisting Deputy Marshal Mahoney in a search of the premises. This was some time between five and ten past 1:00.

When I entered, Agent Edgerly advised me that he had some other business to attend to, and asked me to take over and resume interviewing David Namet, which I did.

During the course of that interview, I advised Mr. Namet of his Constitutional privileges with respect to self-incrimination, and his right to counsel, and asked him personal background questions, which he answered readily.

I asked him if he was aware of the requirements of the Federal Wagering Tax Statutes that a person engaged in the business of accepting wagers for himself or on behalf

of another was liable for the registration and the purchase [fol. 48] of a Federal Wagering Tax Stamp, and he advised me that he was so aware.

I questioned him likewise with respect to the ten per cent wagering excise tax in the instance of a principal in a wagering operation, and he advised me that he was aware of that also.

He denied that he was liable for either of the taxes mentioned, and he stated that he was not a bookie.

Deputy Marshal Mahoney had requested him in my presence to empfy out his pockets, and requested me to make an inventory of the contents of Namet's pockets.

I believe I found that his pockets contained $186.34 in bills and coin. He had three slips of number pool wagers on his person, and other personal effects.

The Special Agents who were conducting the search of the premises brought their findings to the attention of Marshal Mahoney, and the Marshal brought the material out and put it on the kitchen table, where we evaluated the findings.

And from a bedroom there was a quantity of money, I believe, in excess of $800, brought out, that was found in three bundles of seven hundred, an envelope containing 75, and another envelope containing 50. It was 825.

They also brought out a quantity of daily double horse bet slips showing the first and second numbers of the two horses running, and the amount of the wager.

From memory there were about a dozen or more of those slips, and each slip contained about a half dozen to ten daily double horse-bets.

They also brought out miscellaneous half price number pool cards. Those are printed cards dated for a given six month period of the year, and they are general equipment used in the operation of a number pool betting operation.

They are prepared from a history of betting experience where certain numbers in a three-number combination hap- [fol. 49] pen to hit on a frequent basis, and therefore they cause a hazard to the operator of the pool.

They realize these numbers come out often, so they call them half price numbers. Where a given number pays 600 to one odds, these half price numbers are cut in half and

they pay off 300 to one. There were some of those found there.

Further, there were some miscellaneous envelopes and miscellaneous paper, pieces of paper that were covered front and back with number pool bets.

There was another brown manila envelope, on the face of which was written "Davey", and front and back literally covered with daily double results covering a long period of time.

I questioned Mr. Namet about the meaning of these slips, if he denied being a bookie what was he doing with them. At that time, his son David, Jr., who is an attorney, entered the premises and advised his father not to answer any further questions.

I concluded the interview and reported for other raids in the area. And that is about it, sir.

Mr. Redmond: I have no further questions, your Honor.

* * * * * * *

[fol. 49A]

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

No. 60-303-S Criminal

UNITED STATES OF AMERICA

v.

DAVID NAMET

JUDGMENT AND COMMITMENT

On this 23d day of October, 1961 came the attorney for the government and the defendant appeared in person and[1] by counsel,

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[1] Insert "by counsel" or "without counsel; the court advised the defendant of his right to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel."

It Is Adjudged that the defendant has been convicted upon his plea of[2] not guilty and jury verdict of guilty of the offense of engaging in the business of accepting wagers, and in receiving wagers for or on behalf of a person liable for the tax on wagers imposed by 26 U.S.C. 4411, having wilfully failed to pay the special occupational tax due and owing to the United States; in violation of 26 U.S.C. 7203—Count 1; and engaging in the business of accepting wagers and in receiving wagers for or on behalf of a person liable for the tax on wagers, wilfully failing to register as required by 26 U.S.C. 4412; in violation of 26 U.S.C. 7203—Count 2, as charged[3] in Information—2 Counts—and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of[4] four (4) months and to pay a fine of one thousand (1,000) dollars; execution of sentence stayed for two (2) weeks for appeal.

It Is Adjudged that[5]

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Mar-

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[2] Insert (1) "guilty," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be.

[3] Insert "in count(s) number " if required.

[4] Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law.

[5] Enter any order with respect to suspension and probation.

shal or other qualified officer and that the copy serve as the commitment of the defendant.

George C. Sweeney, United States District Judge.

The Court recommends commitment to:[6]

[fol. 50]

PROCEEDINGS IN COURT OF APPEALS

On April 4, 1962, this cause came on to be heard and was fully heard by the Court, Honorable Peter Woodbury, Chief Judge, Honorable Bailey Aldrich, Circuit Judge, and Honorable Francis J. W. Ford, District Judge, sitting.

Thereafter, on April 23, 1962, the following opinion was filed:

[6] For use of Court wishing to recommend a particular institution.

[fol. 51]

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

No. 5924.

DAVID NAMET, Defendant, Appellant,

v.

UNITED STATES OF AMERICA, Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Before Woodbury, Chief Judge, Aldrich, Circuit Judge, and Ford, District Judge.

John H. FitzGerald for appellant.

Paul J. Redmond, Assistant U. S. Attorney, with whom W. Arthur Garrity, Jr., United States Attorney, was on brief, for appellee.

OPINION OF THE COURT—April 23, 1962

PER CURIAM. An examination of the record discloses no error warranting vacation of the judgment below.

Judgment will be entered affirming the judgment of the District Court.

[fol. 52]

JUDGMENT—April 23, 1962

This cause came on to be heard on appeal from the United States District Court for the District of Massachusetts, and was argued by counsel.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The judgment of the District Court is affirmed.

By the Court:

Roger A. Stinchfield, Clerk.

Approved:

Peter Woodbury, Ch. J.

Thereafter, on May 4, 1962, mandate was stayed.

[fol. 53] Clerk's Certificate (omitted in printing).

[fol. 54]

SUPREME COURT OF THE UNITED STATES

No. 134—October Term, 1962

DAVID NAMET, Petitioner,

vs.

UNITED STATES

ORDER ALLOWING CERTIORARI—October 15, 1962

The petition herein for a writ of certiorari to the United States Court of Appeals for the First Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.